

SPEECH

OF

John Caldwell

MR. CALHOUN, OF SOUTH CAROLINA,

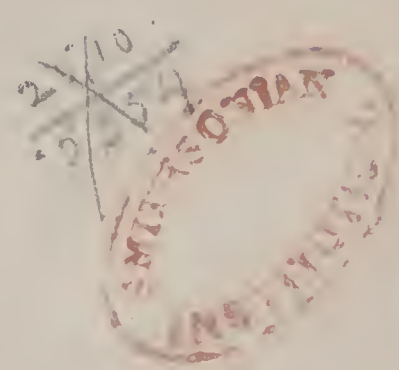
ON

THE VETO POWER:

DELIVERED

IN THE SENATE OF THE UNITED STATES,

FEBRUARY 28, 1842.



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SPEECH OF MR. JOHN C. CALHOUN,

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Delivered in the Senate, February 28, 1842.

Mr. CALHOUN said: The Senator from Kentucky, in support of his amendment, maintained that the people of these States constitute a nation; that the nation has a will of its own; that the numerical majority of the whole was the appropriate organ of its voice; and that whatever derogated from it, to that extent departed from the genius of the government, and set up the will of the minority against the majority. We have thus presented, at the very threshold of the discussion, a question of the deepest import, not only as it regards the subject under consideration, but the nature and character of our government; and that question is, Are these propositions of the Senator true? * If they be, then he admitted the argument against the veto would be conclusive; not, however, for the reason assigned by him, that it would make the voice of a single functionary of the government (the President) equivalent to that of some six Senators and forty members of the other House; but, for the far more decisive reason, according to his theory, that the President is not chosen by the voice of the numerical majority, and does not, therefore, according to his principle, represent truly the will of the nation.

It is a great mistake to suppose that he is elected simply on the principle of numbers. They constitute, it is true, the principal element in his election; but not the exclusive. Each State is, indeed, entitled to as many votes in his election, as it is to representatives in the other House—that is, to its federal population; but to these, two others are added, having no regard to numbers for their representation in the Senate, which greatly increases the relative influence of the small States compared to the large, in the Presidential election. What effect this latter element may have on the numbers necessary to elect a President, may be made apparent by a very short and simple calculation.

The population of the United States, in federal numbers, by the late census, is 15,908,376. Assuming that sixty-eight thousand, the number reported by the committee of the other House, will be fixed on for the ratio of representation there, it will give, according to the calculation of the committee, two hundred and twenty-four members to the other House. Add fifty-two, the number of the Senators, and the electoral college will be

* Mr. CLAY here interrupted Mr. CALHOUN, and said that he meant a majority according to the forms of the Constitution.

Mr. CALHOUN, in return, said he had taken down the words of the Senator at the time, and would vouch for the correctness of his statement. The Senator not only laid down the propositions as stated, but he drew conclusions from them against the President's veto, which could only be sustained on the principle of the numerical majority. In fact, his course at the extra session, and the grounds assumed both by him and his colleague in this discussion, had their origin in the doctrines embraced in that proposition.

found to consist of two hundred and seventy-six, of which one hundred and thirty-nine is a majority. If nineteen of the smaller States, excluding Maryland, be taken, beginning with Delaware and ending with Kentucky inclusive, they will be found to be entitled to one hundred and forty votes, one more than a majority, with a federal population of only 7,227,869; while the seven other States, with a population of 8,680,507, would be entitled to but one hundred and thirty-six votes, three less than a majority, with a population of almost a million and a half greater than the others. Of the one hundred and forty electoral votes of the smaller States, thirty-eight would be on account of the addition of two to each State for their representation in this body, while of the larger there would be but fourteen on that account; making a difference of twenty-four votes on that account, being two more than the entire electoral vote of Ohio, the third State in point of numbers in the Union.

The Senator from Kentucky, with these facts, but acts in strict conformity to his theory of the government, in proposing the limitation he has on the veto power; but as much cannot be said in favor of the substitute he has offered. The argument is as conclusive against the one as the other, or any other modification of the veto that could possibly be devised. It goes farther, and is conclusive against the executive department itself, as elected; for there can be no good reason offered why the will of the nation, if there be one, should not be as fully and perfectly represented in that department as in the legislative.

But it does not stop there. It would be still more conclusive, if possible, against this branch of the government. In constituting the Senate, numbers are totally disregarded. The smallest State stands on a perfect equality with the largest,—Delaware with her seventy-seven thousand, with New York with her two millions and a half. Here a majority of States control, without regard to population; and fourteen of the smallest States, with a federal population of but 4,064,457, little less than a fourth of the whole, can, if they unite, overrule the twelve others with a population of 11,844,949. Nay, more; they could virtually destroy the government, and put a veto on the whole system, by refusing to elect Senators; and yet this equality among States, without regard to numbers, including the branch where it prevails, would seem to be the favorite with the Constitution. It cannot be altered without the consent of every State; and this branch of the government where it prevails, is the only one that participates in the powers of all the others. As a part of the legislative department, it has full participation with the other in all matters of legislation, except originating money bills; while it participates with the Executive in two of its highest functions, that of appointing to office and making treaties; and in that of the Judiciary, in being the high court before which all impeachments are tried.

But we have not yet got to the end of the consequences. The argument would be as conclusive against the Judiciary as against the Senate, or the Executive and his veto. The judges receive their appointments from the Executive and the Senate—the one nominating, and the other consenting to and advising the appointment; neither of which departments, as has been shown, is chosen by the numerical majority. In addition, they hold their office during good behavior, and can only be turned out by impeachment; and yet they have the power, in all cases in law and equity brought before them, in which an act of Congress is involved, to decide on its constitutionality—that is, in effect, to pronounce an absolute veto.

If, then, the Senator's theory be correct, its clear and certain result, if carried out in practice, would be to sweep away, not only the veto, but the Executive, the Senate, and the Judiciary, as now constituted ; and to leave nothing standing in the midst of the ruins but the House of Representatives, where only, in the whole range of the government, numbers exclusively prevail. But, as desolating as would be its sweep, in passing over the government, it would be far more destructive in its whirl over the Constitution. There it would not leave a fragment standing amidst the ruin in its rear.

In approaching this topic, let me premise, (what all will readily admit,) that if the voice of the people may be sought for any where with confidence, it may be in the Constitution, which is conceded by all to be the fundamental and paramount law of the land. If, then, the people of these States do really constitute a nation, as the Senator supposes ; if the nation has a will of its own, and if the numerical majority of the whole is the only appropriate and true organ of that will, we may fairly expect to find that will, pronounced through the absolute majority, pervading every part of that instrument, and stamping its authority on the whole. Is such the fact ? The very reverse. Throughout the whole—from first to last—from beginning to the end—in its formation, adoption, and amendment, there is not the slightest evidence, trace, or vestige of the existence of the facts on which the Senator's theory rests ; neither of the nation, nor its will, nor of the numerical majority of the whole, as its organ, as I shall next proceed to show.

The convention which formed it was called by a portion of the States ; its members were all appointed by the States ; received their authority from their separate States ; voted by States in forming the Constitution ; agreed to it, when formed, by States ; transmitted it to Congress to be submitted to the States for their ratification ; it was ratified by the people of each State in convention, each ratifying by itself, for itself, and bound exclusively by its own ratification ; and by express provision it was not to go into operation, unless nine out of the twelve States should ratify, and then to be binding only between the States ratifying. It was thus put in the power of any four States, large or small, without regard to numbers, to defeat its adoption ; which might have been done by a very small proportion of the whole, as will appear by reference to the first census. That census was taken very shortly after the adoption of the Constitution, at which time the federal population of the then twelve States was 3,462,279, of which the four smallest, Delaware, Rhode Island, Georgia, and New Hampshire, with a population of only 241,490, (something more than the fourteenth part of the whole,) could have defeated the ratification. Such was the total disregard of population in the adoption and formation of the Constitution.

It may, however, be said, it is true, that the Constitution is the work of the States, and that there was no nation prior to its adoption ; but that its adoption fused the people of the States into one, so as to make a nation of what before constituted separate and independent sovereignties. Such an assertion would be directly in the teeth of the Constitution, which says that, when ratified, " it should be binding," (not over the States ratifying, for that would imply that it was imposed by some higher authority ; nor between the individuals composing the States, for that would imply that they were all merged in one ; but) " between the States ratifying the same ;" and thus, by the strongest implication, recognising them as the parties to the instrument, and as maintaining their separate and independent existence as States, after its adoption. But let that pass. I need it not to rebut the

Senator's theory—to test the truth of the assertion, that the Constitution has formed a nation of the people of these States. I go back to the grounds already taken,—that if such be the fact—if they really form a nation, since the adoption of the Constitution, and the nation has a will, and the numerical majority is its only proper organ, in that case the mode prescribed for the amendment of the Constitution would furnish abundant and conclusive evidence of the fact. But here again, as in its formation and adoption, there is not the slightest trace or evidence that such is the fact; on the contrary, most conclusive to sustain the very opposite opinion.

There are two modes in which amendments to the Constitution may be proposed. The one, such as that now proposed, by a resolution to be passed by two-thirds of both Houses; and the other, by a call of a convention, by Congress, to propose amendments, on the application of two-thirds of the States; neither of which gives the least countenance to the theory of the Senator. In both cases, the mode of ratification, which is the material point, is the same, and requires the concurring assent of three-fourths of the States, regardless of population, to ratify an amendment. Let us now pause for a moment to trace the effects of this provision.

There are now twenty-six States, and the concurring assent, of course, of twenty States, is sufficient to ratify an amendment. It then results that twenty of the smaller States, of which Kentucky would be the largest, are sufficient for that purpose, with a population, in federal numbers, of only 7,652,097, less by several hundred thousand than the numerical majority of the whole, against the united voice of the other six, with a population of 8,216,279, exceeding the former by more than half a million. And yet this minority, under the amending power, may change, alter, modify, or destroy every part of the Constitution, except that which provides for an equality of representation of the States in the Senate; while, as if in mockery and derision of the Senator's theory, nineteen of the larger States, with a population, in federal numbers, of 14,526,073, cannot, even if united to a man, alter a letter in the Constitution, against the seven others, with a population of only 1,382,303; and this, too, under the existing Constitution, which is supposed to form the people of these States into a nation. Finally, Delaware, with a population of little more than 77,000, can put her veto on all the other States, on a proposition to destroy the equality of the States in the Senate. Can facts more clearly illustrate the total disregard of the numerical majority, as well in the process of amending, as in that of forming and adopting the Constitution?

All this must appear anomalous, strange, and unaccountable, on the theory of the Senator; but harmonious and easily explained on the opposite; that ours is a union, not of individuals, united by what is called a social compact—for that would make it a nation; nor of governments—for that would have formed a mere confederacy, like the one superseded by the present Constitution; but a union of States, founded on a written, positive compact, forming a Federal Republic, with the same equality of rights among the States composing the union, as among the citizens composing the States themselves. Instead of a nation, we are in reality an assemblage of nations, or peoples, (if the plural noun may be used where the language affords none,) united in their sovereign character immediately and directly by their own act, but without losing their separate and independent existence.

It results from all that has been stated, that either the theory of the Senator is wrong, or that our political system is throughout a profound and radical error. If the latter be the case, then that complex system of ours,

consisting of so many parts, but blended, as was supposed, into one harmonious and sublime whole, raising its front on high and challenging the admiration of the world, is but a misshapen and disproportionate structure that ought to be demolished to the ground, with the single exception of the apartment allotted to the House of Representatives. Is the Senator prepared to commence the work of demolition? Does he believe that all other parts of this complex structure are irregular and deformed appendages; and that if they were taken down, and the government erected exclusively on the will of the numerical majority, it would effect as well, or better, the great objects for which it was instituted: "to establish justice; ensure domestic tranquillity; provide for the common defence; promote the general welfare; and secure the blessings of liberty to ourselves and our posterity?" Will the Senator—will any one—can any one—venture to assert that? And if not, why not? There is the question, on the proper solution of which hangs not only the explanation of the veto, but that of the real nature and character of our complex, but beautiful and harmonious system of government. To give a full and systematic solution, it would be necessary to descend to the elements of political science, and discuss principles little suited to a discussion in a deliberative assembly. I waive the attempt, and shall content myself with giving a much more matter-of-fact solution.

It is sufficient, for that purpose, to point to the actual operation of the government, through all the stages of its existence, and the many and important measures which have agitated it from the beginning; the success of which one portion of the people regarded as essential to their prosperity and happiness, while other portions have viewed them as destructive of both. What does this imply, but a deep conflict of interests, real or supposed, between the different portions of the community, on subjects of the first magnitude—the currency, the finances, including taxation and disbursements; the bank, the protective tariff, distribution, and many others; on all of which the most opposite and conflicting views have prevailed? And what would be the effect of placing the powers of the government under the exclusive control of the numerical majority—of 8,000,000 over 7,900,000; of six States over all the rest—but to give the dominant interest, or combination of interests, an unlimited and despotic control over all others? What, but to vest it with the power to administer the government for its exclusive benefit, regardless of all others, and indifferent to their oppression and wretchedness? And what, in a country of such vast extent and diversity of condition, institutions, industry, and productions, would that be, but to subject the rest to the most grinding despotism and oppression? But what is the remedy? It would be but to increase the evil, to transfer the power to a minority, to abolish the House of Representatives, and place the control exclusively in the hands of the Senate—in that of the four millions, instead of the eight. If one must be sacrificed to the other, it is better that the few should be to the many, than the many to the few.

What then is to be done, if neither the majority nor the minority, the greater nor less part, can be safely trusted with the exclusive control? What but to vest the powers of the government in the whole—the entire people; to make it in truth and reality the government of the people, instead of the government of a dominant over a subject part, be it the greater or less—of the whole people—self-government; and, if this should prove impossible in practice, then to make the nearest approach to it, by requiring the concurrence in the action of the government, of the greatest possible number consistent with the great ends for which government was instituted—justice and security, within and without. But how is that to be effected?

Not certainly by considering the whole community as one, and taking its sense as a whole by a single process, which, instead of giving the voice of all, can but give that of a part. There is but one way by which it can possibly be accomplished; and that is, by a judicious and wise division and organization of the government and community, with reference to its different and conflicting interests, and by taking the sense of each part separately, and the concurrence of all as the voice of the whole. Each may be imperfect of itself; but if the construction be good, and all the keys skilfully touched, there will be given out, in one blended and harmonious whole, the true and perfect voice of the people.

But on what principle is such a division and organization to be made to effect this great object, without which it is impossible to preserve free and popular institutions? To this no general answer can be given. It is the work of the wise and experienced, having full and perfect knowledge of the country and the people in every particular for whom the government is intended. It must be made to fit; and when it does, it will fit no other, and will be incapable of being imitated or borrowed. Without, then, attempting to do what cannot be done, I propose to point out how that which I have stated has been accomplished in our system of government, and the agency the veto is intended to have in effecting it.

I begin with the House of Representatives. There each State has a representation according to its federal numbers, and, when met, a majority of the whole number of members controls its proceedings; thus giving to the numerical majority the exclusive control throughout. The effect is to place its proceedings in the power of eight millions of people over all the rest, and six of the largest States, if united, over the other twenty; and the consequence, if the House was the exclusive organ of the voice of the people, would be the domination of the stronger over the weaker interests of the community, and the establishment of an intolerable and oppressive despotism. To find the remedy against what would be so great an evil, we must turn to this body. Here an entirely different process is adopted to take the sense of the community. Population is entirely disregarded, and States, without reference to the number of people, are made the basis of representation; the effect of which is to place the control here in a majority of the States, which, had they the exclusive power, would exercise it as despotically and oppressively as would the House of Representatives.

Regarded, then, separately, neither truly represents the sense of the community, and each is imperfect of itself; but when united, and the concurring voice of each is made necessary to enact laws, the one corrects the defects of the other; and, instead of the less popular derogating from the more popular, as is supposed by the Senator, the two together give a more full and perfect utterance to the voice of the people than either could separately. Taken separately, six States might control the House; and a little upwards of four millions might control the Senate, by a combination of the fourteen smaller States; but by requiring the concurrent votes of the two, the six largest States must add eight others to have the control in both bodies. Suppose, for illustration, they should unite with the eight smallest, (which would give the least number by which an act could pass both Houses,) it will be found, by adding the population in federal numbers of the six largest to the eight smallest States, that the least number by which an act can pass both Houses, if the members should be true to those they represent, would be 9,788,570 against a minority of 6,119,797, instead of 8,000,000 against 7,900,000, if the assent of the most popular branch alone were required.

This more full and perfect expression of the voice of the people by the concurrence of the two, compared to either separately, is a great advance towards a full and perfect expression of their voice; but, great as it is, it falls far short, and the framers of the Constitution were accordingly not satisfied with it. To render it still more perfect, their next step was to require the assent of the President, before an act of Congress could become a law; and, if he disapproved, to require two-thirds of both Houses to overrule his veto. We are thus brought to the point immediately under discussion, and which, on that account, claims a full and careful examination.

One of the leading motives for vesting the President with this high power was, undoubtedly, to give him the means of protecting the portion of the powers allotted to him by the Constitution, against the encroachment of Congress. To make a division of power effectual, a veto in one form or another is indispensable. The right of each to judge for itself of the extent of the power allotted to its share, and to protect itself in its exercise, is what in reality is meant by a division of power. Without it, the allotment to each department would be a mere partition, and no division at all. Acting under this impression, the framers of the Constitution have carefully provided that his approval should be necessary, not only to the acts of Congress, but to every resolution, vote, or order, requiring the consent of the two Houses, so as to render it impossible to elude it by any conceivable device. This of itself was an adequate motive for the provision, and, were there no other, ought to be a sufficient reason for the rejection of this resolution. Without it, the division of power between the legislative and executive departments would have been merely nominal.

But it is not the only motive. There is another and deeper, to which the division itself of the government into departments is subordinate;—to enlarge the popular basis, by increasing the number of voices necessary to its action. As numerous as are the voices required to obtain the assent of the people through the Senate and the House to an act, it was not thought by the framers of the Constitution sufficient for the action of the government in all cases. Nine thousand eight hundred, as large as is the number, were regarded as still too few, and six thousand one hundred too many, to remove all motives for oppression; the latter being not too few to be plundered, and the former not too large to divide the spoils of plunder among. Till the increase of numbers on one side, and the decrease on the other, reaches that point, there is no security for the weaker against the stronger, especially in so extensive a country as ours. Acting in the spirit of these remarks, the authors of the Constitution, although they deemed the concurrence of the Senate and the House as sufficient, with the approval of the President, to the enactment of laws in ordinary cases, yet, when he dissented, they deem it a sufficient presumption against the measure to require a still greater enlargement of the popular basis for its enactment. With this view, the assent of two-thirds of both Houses was required to overrule his veto; that is, eighteen States in the Senate, and a constituency of ten million six hundred thousand in the other House.

But it may be said that nothing is gained towards enlarging the popular basis of the government by the veto power; because the number necessary to elect a majority to the two Houses, without which the act could not pass, would be sufficient to elect him. That is true. But he may have been elected by a different portion of the people; or, if not, great changes may take place during his four years, both in the Senate and the House, which may change the majority that brought him into power, and with it the

measures and policy to be pursued. In either case, he might find it necessary to interpose his veto to maintain his views of the Constitution, or the policy of the party of which he is the head, and which elevated him to power.

But a still stronger consideration for vesting him with the power may be found in the difference of the manner of his election, compared with that of the members of either House. The Senators are elected by the vote of the Legislatures of the respective States, and the members of the House by the people, who, in almost all the States, elect by districts. In neither is there the least responsibility of the members of any one State, to the Legislature or people of any other State. They are, as far as their responsibility may be concerned, solely and exclusively under the influence of the States and people who respectively elect them. Not so the President. The votes of the whole are counted in his election, which makes him more or less responsible to every part—to those who voted against him, as well as those to whom he owes his election; which he must feel sensibly. If he should be an aspirant for a re-election, he will desire to gain the favorable opinion of States that opposed him, as well as to retain that of those which voted for him. Even if he should not be a candidate for re-election, the desire of having a favorite elected, or maintaining the ascendancy of his party, may have, to a considerable extent, the same influence over him. The effect, in either case, would be to make him look more to *the interest of the whole*—to soften sectional feelings and asperity—to be more of a patriot than the partisan of any particular interest; and, through the influence of these causes, to give a more general character to the politics of the country, and thereby render the collision between sectional interests less fierce than it would be if legislation depended solely on the members of the two Houses, who owe no responsibility but to those who elected them. The same influence acts even on the aspirants for the Presidency, and is followed to a very considerable extent by the same softening and generalizing effects. In the case of the President, it may lead to the interposing of his veto against oppressive and dangerous sectional measures, even when supported by those to whom he owes his election. But, be the cause of interposing his veto what it may, its effect in all cases is to require a greater body of constituency, through the legislative organs, to put the government in action against it—to require another key to be struck, and to bring out a more full and perfect response from the voice of the people.

There is still another impediment, if not to the enactment of laws, to their execution, to be found in the judiciary department. I refer to the right of the courts, in all cases coming before them in law or equity, where an act of Congress comes in question, to decide on its unconstitutionality; which, if decided against the law in the Supreme Court, is, in effect, a permanent veto. But here a difference must be made between a decision against the constitutionality of a law of Congress and that of States. The former acts as a restriction on the powers of this government, but the latter as an enlargement.

Such are the various processes of taking the sense of the people through the divisions and organization of the different departments of the government; all of which, acting through their appropriate organs, are intended to widen its basis and render it more popular, instead of less, by increasing the number necessary to put it in action, and having for their object to prevent one portion of the community from aggrandizing or enriching itself at the expense of the other, and to restrict the whole to the sphere intended by the framers of the Constitution. Has it effected these objects? Has

it prevented oppression and usurpation on the part of the government? Has it accomplished the objects for which the government was ordained, as enumerated in the preamble of the Constitution? Much—very much—certainly has been done, but not all. Many instances might be enumerated, in the history of the government, of the violation of the Constitution—of the assumption of powers not delegated to it—of the perversion of those delegated to uses never intended—and of their being wielded by the dominant interest, for the time, for its aggrandizement, at the expense of the rest of the community;—instances that may be found in every period of its existence, from the earliest to the latest, beginning with the bank and bank connexion at its outset, and ending with the distribution act at the late extraordinary session. How is this to be accounted for? What is the cause?

The explanation and cause will be found in the fact, that, as fully as the sense of the people is taken in the action of the government, it is not taken fully enough. For, after all that has been accomplished in that respect, there are but two organs through which the voice of the community acts directly on the government, and which, taken separately, or in combination, constitute the elements of which it is composed: the one is the majority of the States regarded in their corporate character as bodies politic, which, in its simple form, constitutes the Senate; and the other is the majority of the people of the States, of which, in its simple form, the House of Representatives is composed. These combined, in the proportions already stated, constitute the executive department, and that department and the Senate appoint the judges, who constitute the Judiciary. But it is only in their simple form in the Senate and the other House that they have a steady and habitual control over the legislative acts of the government. The veto of the Executive is rarely interposed—not more than about twenty times during the period of more than fifty years that the government has existed. Their effects have been beneficially felt, but only casually, at long intervals, and without steady and habitual influence over the action of the government. The same remarks are substantially applicable to what, for the sake of brevity, may be called the veto of the Judiciary—the right of negating a law, for the want of constitutionality, when it comes in question, in a case before the courts.

The government, then, of the Union, being under no other habitual and steady control but these two majorities, acting through this and the other House, is, in fact, placed substantially under the control of the portion of the community which the united majorities of the two Houses represent for the time, and which may consist of but fourteen States, with a federal population of less than ten millions, against a little more than six, as has been already explained. But, as large as is the former, and as small as is the latter, the one is not large enough, in proportion, to prevent it from plundering, under the forms of law, and the other small enough from being plundered; and hence the many instances of violation of the Constitution—of usurpation, of powers perverted and wielded for selfish purposes, which the history of the government affords. They furnish proof conclusive that the principle of plunder, so deeply implanted in all governments, has not been eradicated in ours, by all the precaution taken by its framers against it.

But, in estimating the number of the constituency necessary to control the majority in the two Houses of Congress at something less than ten millions, I have estimated it altogether too high, regarding the practical operation of the government. To form a correct conception of its practical operation in

this respect, another element, which has in practice an important influence, must be taken into the estimate, and which I shall next proceed to explain.

Of the two majorities, which, acting either separately or in combination, control the government, the numerical majority is by far the most influential. It has the exclusive control in the House of Representatives, and preponderates more than five to one in the choice of the President, assuming that the ratio of representation will be fixed at sixty eight thousand under the late census. It also greatly preponderates in appointment of the judges, the right of nominating having much greater influence in making appointments than that of advising and consenting. From these facts, it must be apparent that the leaning of the President will be to that element of power to which he mainly owes his elevation, and on which he must principally rely to secure his re-election, or maintain the ascendancy of the party and its policy, the head of which he usually is. This leaning of his must have a powerful effect on the inclination and tendency of the whole government. In his hands are placed, substantially, all the honors and emoluments of the government; and these, when greatly increased, as they are and ever must be when the powers of the government are greatly stretched and increased, must give the President a corresponding influence over not only the members of both Houses, but also public opinion, and, through that, a still more powerful indirect influence over them; and thus they may be brought to sustain or oppose, through his influence, measures which otherwise they would have opposed or sustained, and the whole government be made to lean in the same direction with the Executive.

From these causes the government, in all of its departments, gravitates steadily towards the numerical majority, and has been moving slowly towards it from the beginning; sometimes, indeed, retarded, or even stopped or thrown back, but, taking any considerable period of time, always advancing towards it. That it begins to make near approach to that fatal point, ample proof may be found in the oft-repeated declaration of the mover of this resolution, and of many of his supporters at the extraordinary session,—that the late Presidential election decided all the great measures which he so ardently pressed through the Senate. Yes, even here—in this chamber, in the Senate, which is composed of the opposing element, and on which the only effectual resistance to this fatal tendency exists that is to be found in the government—we are told that the popular will, as expressed in the Presidential election, is to decide not only the election, but every measure which may be agitated in the canvass in order to influence the result. When what was thus boldly insisted on comes to be an established principle of action, the end will be near.

As the government approaches nearer and nearer to the one absolute and single power, the will of the greater number, its action will become more and more disturbed and irregular; faction, corruption, and anarchy, will more and more abound; patriotism will daily decay, and affection and reverence for the government grow weaker and weaker, until the final shock occurs, when the system will rush to ruin, and the sword take the place of law and constitution.

Let me not be misunderstood. I object not to that structure of the government which makes the numerical majority the predominant element: it is, perhaps, necessary that it should be so in all popular constitutional governments like ours, which excludes classes. It is necessarily the exponent of the strongest interest, or combination of interests, in the community; and it would seem to be necessary to give it the preponderance, in order to infuse

into the government the necessary energy to accomplish the ends for which it was instituted. The great question is, How is due preponderance to be given to it, without subjecting the whole, in time, to its unlimited sway? which brings up the question, Is there anywhere, in our complex system of government, a guard, check, or contrivance, sufficiently strong to arrest so fearful a tendency of the government? Or, to express it in more direct and intelligible language, Is there anywhere in the system a more full and perfect expression of the voice of the people of the States calculated to counteract this tendency to the concentration of all the powers of the government in the will of the numerical majority, resulting from the partial and imperfect expression of their voice through its organs?

Yes, fortunately, doubly fortunately, there is; not only a more full and perfect, but a full and perfect expression to be found in the Constitution, acknowledged by all to be the fundamental and supreme law of the land. It is full and perfect, because it is the expression of the voice of each State, adopted by the separate assent of each, by itself, and for itself; and is the voice of all, by being that of each component part, united and blended into one harmonious whole. But it is not only full and perfect, but as just as it is full and perfect; for, combining the sense of each, and therefore all, there is nothing left on which injustice, or oppression, or usurpation can operate. And, finally, it is as supreme as it is just; because, comprehending the will of all, by uniting that of each of the parts, there is nothing within or above to control it. It is, indeed, the *vox populi vox Dei*; the creating voice that called the system into existence, and of which the government itself is but a creature, clothed with delegated powers to execute its high behests.

We are thus brought to a question of the deepest import, and on which the fate of the system depends. How can this full, perfect, just, and supreme voice of the people, imbodyed in the Constitution, be brought to bear habitually and steadily in counteracting the fatal tendency of the government to the absolute and despotic control of the numerical majority? Or—if I may be permitted to use so bold an expression—how is this, the Deity of our political system, to be successfully invoked, to interpose its all-powerful creating voice to save from perdition the creature of its will and the work of its hand? If it cannot be done, ours, like all free governments preceding it, must go the way of all flesh; but if it can be, its duration may be from generation to generation, to the latest posterity. To this all-important question I will not attempt a reply at this time. It would lead me far beyond the limits properly belonging to this discussion. I descend from the digression nearer to the subject immediately at issue, in order to reply to an objection to the veto power, taken by the Senator from Virginia on this side the chamber, [Mr. ARCHER.]

He rests his support of this resolution on the ground that the object intended to be effected by the veto has failed; that the framers of the Constitution regarded the legislative department of the government as the one most to be dreaded; and that their motive for vesting the Executive with the veto, was to check its encroachments on the other departments: but that the Executive, and not the Legislature, had proved to be the most dangerous; and that the veto had become either useless or mischievous, by being converted into a sword to attack, instead of a shield to defend, as was originally intended.

I make no issue with the Senator, as to the correctness of his statement. I assume the facts to be as he supposes; not because I agree with him, but simply with the view of making my reply more brief.

Assuming, then, that the executive department has proved to be the more formidable, and that it requires to be checked, rather than to have the power of checking others, the first inquiry on that assumption, should be into the cause of its increase of power, in order to ascertain the seat and the nature of the danger ; and the next, whether the measure proposed—that of divesting it of the veto, or modifying it as proposed—would guard against the danger apprehended.

I begin with the first ; and in entering on it, assert, with confidence, that if the Executive has become formidable to the liberty or safety of the country, or other departments of the government, the cause is not in the Constitution, but in the acts and omissions of Congress itself.

According to my conception, the powers vested in the President by the Constitution are few and effectually guarded, and are not of themselves at all formidable. In order to have a just conception of the extent of his powers, it must be borne in mind that there are but two classes of power known to the Constitution ; and they are powers that are expressly granted, and those that are necessary to carry the granted powers into execution. Now, by a positive provision of the Constitution, all powers necessary to the execution of the granted powers are expressly delegated to Congress, be they powers granted to the legislative, executive, or judicial department ; and can only be exercised by the authority of Congress, and in the manner prescribed by law. This provision will be found in what is called the residuary clause, which declares that Congress shall have power “to make all laws which shall be necessary and proper to carry into execution the foregoing powers,” (those granted to Congress,) “and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.” A more comprehensive provision cannot be imagined. It carries with it all powers necessary and proper to the execution of the granted powers, be they lodged where they may ; and vests the whole, in terms not less explicit, in Congress. And here let me add, in passing, that the provision is as wise as it is comprehensive. It deposits the right of deciding what powers are necessary for the execution of the granted powers where, and where only, it can be lodged with safety—in the hands of the law-making power ; and forbids any department or officer of the government from exercising any power not expressly authorized by the Constitution or the laws—thus making ours emphatically a government of *law and constitution*.

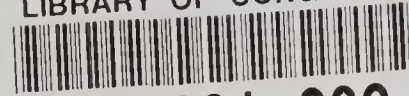
Having now shown that the President is restricted by the Constitution to powers expressly granted to him, and that if any of his granted powers be such that they require other powers to execute them, he cannot exercise them without the authority of Congress, I shall now show that there is not one power vested in him that is any way dangerous, unless made so by the acts or permission of Congress. I shall take them in the order they stand in the Constitution.

He is, in the first place, made commander-in-chief of the army and navy of the United States, and the militia, when called into actual service. Large and expensive military and naval establishments, and numerous corps of militia, called into service, would no doubt increase very dangerously the power and patronage of the President ; but neither can take place but by the action of Congress. Not a soldier can be enlisted, a ship of war built, nor a militiaman called into service, without its authority ; and very fortunately our situation is such, that there is no necessity, and, probably, will be none, why his power and patronage should be dangerously increased by either of those means.

He is next vested with the power to make treaties, and to appoint officers, with the advice and consent of the Senate; and here again his power can only be made dangerous by the action of one or both Houses of Congress. In the formation of treaties, two-thirds of the Senate must concur; and it is difficult to conceive of a treaty that could materially enlarge his powers, that would not require an act of Congress to carry it into effect. The appointing power may, indeed, dangerously increase his patronage, if officers be uselessly multiplied and too highly paid; but if such should be the case, the fault would be in Congress, by whose authority exclusively they can be created or their compensation regulated.

But much is said in this connexion of the power of removal, justly accompanied by severe condemnation of the many and abusive instances of the use of the power, and the dangerous influence it gives the President; in all of which I fully concur. It is, indeed, a corrupting and dangerous power, when officers are greatly multiplied and highly paid, and when it is perverted from its legitimate object to the advancement of personal or party purposes. But I find no such power in the list of powers granted to the Executive, which is proof conclusive that it belongs to the class necessary and proper to execute some other power, if it exists at all, which none can doubt; and, for reasons already assigned, cannot be exercised without authority of law. If, then, it has been abused, it must be because Congress has not done its duty in permitting it to be exercised by the President without the sanction of law authorizing its exercise, and guarding against the abuses to which it is so liable.

The residue of the list are rather duties than rights—that of recommending to Congress such measures as he may deem expedient; of convening both Houses on extraordinary occasions; of adjourning them when they cannot agree on the time; of receiving ambassadors and other ministers; of taking care that the laws be faithfully executed, and commissioning the officers of the United States. Of all these, there is but one which claims particular notice, in connexion with the point immediately under consideration; and that is, his power as the administrator of the laws. But whatever power he may have in that capacity depends on the action of Congress. If Congress should limit its legislation to the few great subjects confided to it; so frame its laws as to leave as little as possible to discretion, and take care to see that they are duly and faithfully executed, the administrative powers of the President would be proportionally limited, and divested of all danger. But if, on the contrary, it should extend its legislation in every direction; draw within its action subjects never contemplated by the Constitution; multiply its acts, create numerous offices, and increase the revenue and expenditures proportionally, and, at the same time, frame its laws vaguely and loosely, and withdraw, in a great measure, its supervising care over their execution, his power would indeed become truly formidable and alarming. Now I appeal to the Senator and his friend, the author of this resolution, whether the growth of Executive power has not been the result of such a course on the part of Congress. I ask them whether his power has not in fact increased, or decreased, just in proportion to the increase or decrease of the system of legislation, such as has been described? What was the period of its maximum increase, but the very period which they have so frequently and loudly denounced as the one most distinguished for the prevalence of executive power and usurpation? Much of that power certainly depended on the remarkable man then at the head of that department; but much—far more—on the system of legislation



which the author of this resolution had built up with so much zeal and labor, and which carried the powers of the government to a point beyond that to which it had ever before attained, drawing many and important powers into its vortex, of which the framers of the Constitution never dreamed. And here let me say to both of the Senators, and the party of which they are prominent members, that they labor in vain to bring down executive power, while they support the system they so zealously advocate. The power they complain of is but its necessary fruit. Be assured, that as certain as Congress transcends its assigned limits, and usurps powers never conferred, or stretches those conferred beyond the proper limits, so surely will the fruits of its usurpation pass into the hands of the Executive. In seeking to become master, it but makes a master in the person of the President. It is only by confining itself to its allotted sphere, and a discreet use of its acknowledged powers, that it can retain that ascendancy in the government which the Constitution intended to confer on it.

Having now pointed out the cause of the great increase of the executive power on which the Senator rested his objection to the veto power; and having satisfactorily shown, as I trust I have, that, if it has proved dangerous in fact, the fault is not in the Constitution, but in Congress,—I would next ask him, in what possible way could the divesting the President of his veto, or modifying it as he proposes, limit his power? Is it not clear that, so far from the veto being the cause of the increase of his power, it would have acted as a limitation on it, if it had been more freely and frequently used? If the President had vetoed the original bank, the connexion with the banking system, the tariffs of '24 and '28, and the numerous acts appropriating money for roads, canals, harbors, and a long list of other measures not less unconstitutional, would his power have been half as great as it now is? He has grown great and powerful, not because *he used* his veto, but because *he abstained* from using it. In fact, it is difficult to imagine a case in which its application can tend to enlarge his power, except it be the case of an act intended to repeal a law calculated to increase his power, or to restore the authority of one which, by an arbitrary construction of his power, he has set aside.

Now let me add, in conclusion, that this is a question, in its bearings, of vital importance to that wonderful and sublime system of government which our patriotic ancestors established, not so much by their wisdom, as wise and experienced as they were, as by the guidance of a kind Providence, who, in his divine dispensation, so disposed events as to lead to the establishment of a system of government wiser than those who framed it. The veto, of itself, as important as it is, sinks into nothing compared to the principle involved. It is but one, and that by no means the most considerable, of those many wise devices which I have attempted to explain, and which were intended to strengthen the popular basis of our government, and resist its tendency to fall under the control of the dominant interest, acting through the mere numerical majority. The introduction of this resolution may be regarded as one of the many symptoms of that fatal tendency, and of which we had such fearful indications in the bold attempt at the late extraordinary session, of forcing through a whole system of measures of the most threatening and alarming character, in the space of a few weeks, on the ground that they were all decided in the election of the late President; thus attempting to substitute the will of a majority of the people, in the choice of a Chief Magistrate, as the legislative authority of the Union, in lieu of the beautiful and profound system established by the Constitution.